



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,402	10/23/2003	James A. Vanck	Sport.201	8500
23855	7590	03/14/2006	EXAMINER	
ROBERT D. VARITZ, P.C. 4915 S.E. 33RD PLACE PORTLAND, OR 97202			SOOHOO, TONY GLEN	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 03/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/692,402

Applicant(s)

VANEK, JAMES A.

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6-8,11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-8,11 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1, and 7-8, are rejected under 35 U.S.C. 103(a) as being unpatentable over by Simmonds 3223389.

Simmonds 3223389 teaches a shaft 6, a stop surface upon 7, two blades 8, 8 with a twist as seen in figure 1. It is noted that the twist would inherently provide the functional recitation to provide to urge the blades into operation or collapsed orientation.

Simmonds 3223389 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the blade being a polymer blade. The use of polymer plastic material is old and well known for the characteristics of ease of cleaning, and lower cost of manufacture, accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the material used by the Simmonds reference with a polymer blade so that the blade is easily cleaned and the manufacture costs are lowered, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

3. Claims 6, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Simmonds 3223389 in view of Stiffler 4083653 and Walls 6419385, or in the alternative Simmonds 3223389 in view of McClean 4872764 and Walls 6419385.

Simmonds 3223389 discloses all of the recited subject matter as defined within the scope of the claims with the exception of reduced diameter shaft to provide a manner to couple the shaft to a removable power motor, and further having a polymer blade of PVC.

The references to Stiffler 4083653 or in the alternative McClean 4872764 both teach in the environment of an collapsible blade agitator with a central shaft (respectively 12, 21) may be attached to a removable drive motor (respectively 36, 15) by an attachment to the shaft having a reduced diameter section as respectively seen in figures 4 (McClean) or alternately 3 (Stiffler).

In view of the teaching by Stiffler 4083653 or in the alternative McClean 4872764, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the end of the shaft of the Simmonds 3223389 shaft with a reduced portion such that the shaft may be more easily attached to a removable motor drive.

With regards to the teaching of the use of PVC as a mixer blade material, the reference to Walls 6419385 discloses that a mixer blade may be formed from PVC, column 3, lines 56-60. Thus, this is a evidence of fact that the use of polymer plastic material is old and well known in the use of mixer blades and whereas plastics are known for the characteristics of ease of cleaning, and lower cost of manufacture, accordingly, it is deemed that it would have been obvious to one of ordinary skill in the

art to substitute for the material used by the Simmonds reference with a polymer PVC blade so that the blade is easily cleaned and the manufacture costs are lowered, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

### ***Response to Arguments***

4. Applicant's arguments filed 1-5-2006 have been fully considered but they are not persuasive. Applicant argues that the claims distinguishes over the prior art since the references do not disclose a blade of polymer material.

5. In response, the rejection addressed motivation and knowledge in the art to the use of appropriate materials in a modification of the blade structure of the prior art structure. Such knowledge, motivation and reasoning has been outlined previously and currently in the obviousness rejections. Applicant has not addressed any reason why there is no motivation, or pointed out evidence that such common knowledge to polymer materials would not be known and applicable to the art of mixer blades.

6. Applicant requests information to the use and advantages of polymer material applicable in mixer blades. The Walls 6419385 patent is such a reference, and in fact, teaches the use of PVC polymer plastic as a blade material. The 1997 reference to Larsen 5676463 teaches the use of polyethylene plastic in the production of the mixer and blade.

Art Unit: 1723

7. If applicant further requests to be schooled in the art of material science to the advantages and motivation to utilize polymer plastics, such references will be also provided. A reference of such knowledge, in which it was known twenty-eight years ago in 1978, is disclosed by a reference to Bindel 4092984, the reference acknowledges in column 2, lines 55-56 "[the housing is] preferably made from clear plastic for ease in cleaning.". Nine-teen years ago, in 1987, as shown by the reference to Morales-George 4656997 on column 3, lines 5-6, the reference points out and states "component parts are desirably comprised of plastic for ease in cleaning". Recently, such common knowledge to the advantages of plastic polymer material has not been lost in the art, whereby in the year 2000, the DuBois 6094,999 reference on column 7, lines 49-50, "[the housing is made of] moldable and durable plastics for ease of cleaning and maintenance". Thus it deemed that the utilization of polymer plastics as a construction material and its advantages has been known in the art.

### ***Conclusion***

8. Applicant has amended the claim to point out the particular material of PVC which was not earlier presented.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not


Art Unit: 1723

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tony G Soohoo  
Primary Examiner  
Art Unit 1723

\*\*\*